

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3430 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KHAWAS MEGHA TAPU

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR for M/S THAKKAR ASSOC. for Petitioners
MR MUKESH PATEL, AGP for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 21/12/98

ORAL JUDGEMENT

1. Land bearing survey no. 690 admeasuring 29,678.30 sq. mtrs. being the HUF property of the petitioners and alleged to be used mainly for agriculture since 1972-73, was the subject matter of the proceedings u/S. 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Ceiling Act'). The Competent Authority issued draft statement, a copy of which was

stated to have been served only to one of the co-parceners. It is alleged by the petitioners that no notice as required u/S. 8(3) of the Ceiling Act read with the relevant rules was issued. In this background it is further the case of the petitioners that final statement was issued u/S. 9 of the Ceiling Act declaring 27,678.30 sq. mtrs. of land as surplus land while granting only one unit admeasuring 2,000 sq. mtrs. The petitioners have also alleged certain further facts, but it would not be necessary to go into the same; instead it would be appropriate to refer to further proceedings in respect of the land in question. They are in form of proceedings u/S. 34 of the Ceiling Act as well as appeal u/S. 33 of the Ceiling Act. The petitioners' appeal u/S. 33 of the Ceiling Act came to be dismissed on the ground that the Government has taken the matter in suo-motu revision u/S. 34 of the Ceiling Act. That order is at Annexure-C dated 18/1/1996 at page 39. The petitioners, however, felt more aggrieved with the impugned order dated 28/2/1994, which speaks about disposal of the revision u/S. 34 of the Ceiling Act only on the ground that the Competent Authority had nothing to say before the Government taking the matter in revision. It clearly appears on the face of the said impugned order that the petitioners did not have opportunity of being heard on the merits of the matter. The Government has also not addressed itself to the merits of the petitioners' case. The order speaks about disposal of the revision application only on the ground that the Competent Authority had nothing to say into the matter. It would therefore, be apparent on the face of the order that neither rules of natural justice appear to have been observed nor there has been any application of mind.

2. In view of the facts stated in the petition, impugned order Annexure-B rendered by the Revisional Authority (Government through its Deputy Secretary, Revenue Department) in ULC3489/3066/2786/V.3 dated 28/2/1994 is hereby set aside. Since impugned order passed by the Urban Land Tribunal in petitioners' appeal is entirely based on the ground that the revision is pending, the same also deserves to be set aside. It is clear that merits of the petitioners' case whatever they are, need consideration at the hands of either the Government through its concerned Secretary or Deputy Secretary or the Urban Land Tribunal-cum-Secretary, Revenue Department and appropriate decision is required to be taken by either of the authorities. Mr. Thakkar, learned senior counsel submits that the matter might be remanded to the Government for being considered u/S. 34 of the Ceiling Act.

3. In view of the above, impugned order Annexure-B is hereby set aside and the matter is remanded to the Government for consideration thereof afresh after hearing the petitioners on merits of the petitioners' case. Rule made absolute accordingly with no order as to cost.

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